

REMARKS

Claims 1-11 are pending in the application upon entry of the amendments and new claims. Claim 1 has been amended to better describe certain aspects of the invention. Claims 4-11 have been added to further describe certain aspects of the invention. Favorable reconsideration in light of the amendments, the new claims, the Terminal Disclaimer, and the remarks which follow is respectfully requested.

Double Patenting Rejection

Claim 1 has been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claim 9 of Application Serial No. 11/020,436. The subject application and Application No. 11/020,436 are owned by the same entity, Toyo Shinyaku Co., Ltd. The enclosed Terminal Disclaimer renders this rejection moot.

Anticipation Rejections

Claims 1 and 2 have been rejected under 35 U.S.C. §102(b) over Hersh (US Patent No. 5,906,811). Hersh discloses intra-oral delivery systems containing proanthocyanidins (20 mgs per day) from pine bark or grape seeds (column 19, lines 3 and 4 of Hersh).

Claim 1 has been rejected under 35 U.S.C. §102(b) over Ganan-Calvo (US Patent No. 6,248,378). Ganan-Calvo discloses enhanced food products such as chewing gums (column 25, line 48 of Ganan-Calvo). The good products may contain a pine bark extract (column 25, line 58 of Ganan-Calvo).

Claim 1 has been rejected under 35 U.S.C. §102(b) over Bruijn et al. (US Patent Application Publication No. 2003/0086986, hereinafter “Bruijn”). Bruijn discloses topical applications containing between 10 and 10,000 parts per million of a naturally-occurring antimicrobial agent such as a pine bark extract (Abstract and claim 1 of Bruijn).

In order to establish anticipation, each and every feature as set forth in the claim must be disclosed in a single cited art document. The claimed composition for an oral cavity contains a pine bark extract that contains at least 20 wt% of oligomeric

proanthocyanidins with respect to the dry weight of the pine bark extract. The oligomeric proanthocyanidins have a degree of polymerization of 2 to 4.

Hersh, Ganan-Calvo, and Bruijn fail to disclose a pine bark extract containing at least 20 wt% of oligomeric proanthocyanidins and having a degree of polymerization of 2 to 4. Nowhere in the cited art documents is such a pine bark extract disclosed. Since the cited art does not disclose each and every feature of claim 1, none of Hersh, Ganan-Calvo, and Bruijn can anticipate claims 1 and 2. Accordingly, withdrawal of the rejections is respectfully requested.

Obviousness Rejection

Claims 1-3 have been rejected under 35 U.S.C. §103(a) over Hersh. Hersh is described above.

To reject claims in an application under §103, an examiner must establish a prima facie case of obviousness. In order to establish a prima facie case of obviousness, the cited art reference or references when combined must teach or suggest all claim features. See MPEP §706.02(j).

The claimed composition for an oral cavity contains a pine bark extract containing at least 20 wt% of oligomeric proanthocyanidins and having a degree of polymerization of 2 to 4. As discussed in the previous section, Hersh fails to teach or suggest a pine bark extract containing at least 20 wt% of oligomeric proanthocyanidins and having a degree of polymerization of 2 to 4. Nowhere in Hersh is such a pine bark extract taught or suggested. Oligomeric proanthocyanidins and having a degree of polymerization of 2 to 4 contribute to the ability of improving blood flow within the mouth, reducing halitosis, and preventing periodontal disease. Supporting data for these beneficial effects are described in the instant specification. Nowhere in Hersh is it taught or suggested that oligomeric proanthocyanidins and having a degree of polymerization of 2 to 4 contribute to the ability of improving blood flow within the mouth, reducing halitosis, and preventing periodontal disease. Since Hersh does not teach or suggest all of the claim features,

claims 1-3 cannot be rendered obvious. Accordingly, withdrawal of the rejection is respectfully requested.

Petition for Extension of Time

A request for a one month extension of time is hereby made. Payment is being made through the EFS electronic filing system.

Should the Examiner believe that a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact Applicant' undersigned attorney at the telephone number listed below.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-1063.

Respectfully submitted,
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